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FIRST GENERAL COUNSEL'S REPORT

CELA

RAD REFERRAL 14L-38

DATE RECEIVED: November 21, 2014

DATE OF NOTIFICATION: December 1, 2014

DATE ACTIVATED: January 12, 2015

EARLIEST SOL: August 20, 2015

LATEST SOL: November 20, 2016

ELECTION CYCLES: 2010, 2012

SOURCE:

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RESPONDENT:

Democratic Executive Committee of Florida and
Judy Mount in her official capacity as treasurer

RELEVANT STATUTES:

52 U.S.C. § 30104(b)¹

11 C.F.R. § 104.1(a)

11 C.F.R. § 104.3(a), (b)

11 C.F.R. § 111.43

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred the Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to disclose receipts and disbursements totaling \$1,291,975.16 on twelve different reports: its 2010 August Monthly, 2010 September Monthly, 2010 October Monthly, 2010 12-Day Pre-General, 2010 30-Day Post-General, 2010 Year-End, 2011 March Monthly, 2011 April Monthly, 2011 May Monthly, 2011 June Monthly, 2011 July Monthly, and 2011 November Monthly Reports ("the Twelve Reports"). See RAD Referral,

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

dated Nov. 21, 2014 ("Referral"), incorporated herein by reference. In response, the Committee acknowledges the violations but requests that the Commission consider various mitigating factors and either dismiss the matter or refer it to the Alternative Dispute Resolution Office ("ADRO"). *See* Committee Resp. at 2, 4. Based on the available information, we recommend that the Commission open a matter under review ("MUR") and find reason to believe that the Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) by failing to accurately disclose receipts and disbursements. Additionally, we recommend that the Commission enter into pre-probable cause conciliation with the Committee

II. FACTS

The Committee is a state party committee of the Democratic Party.² The Committee timely filed each of the Twelve Reports, but as shown in the chart below, the Committee filed amendments to each of these reports disclosing additional receipts and disbursements totaling \$1,291,975.16.³

² *See* Amended Statement of Organization filed on October 9, 2014, available at <http://docquery.fec.gov/pdf/142/14960034142/14960034142.pdf>.

³ RAD referred to OGC pursuant to the 2011-2012 RAD Review and Referral Procedures for Unauthorized Committees at 75 (the "Referral Procedures") (approved by Comm'n Apr. 5, 2011). Standard 7 of those procedures states: [a] referral may be made to OGC if the increase or decrease in activity (receipts plus expenditures plus debts) aggregates in excess of _____ on amendments filed to reports covering the current and/or previous cycles, which were received during the current (2011-2012) election cycle." *See* Referral Procedures at 75-76. The aggregate increased activity of \$1,291,975.16 reflects only increased activity shown on amendments to the 2010 and 2011 reports that the Committee filed after January 1, 2011. The increased activity on the amendments to 2010 reports filed on December 10, 2010, was not included in this referral. *See* Cover Memo to Referral at 1, n. 1.

Report	Dates of Amendment ⁴	Total Amount of Increased Receipts	Total Amount of Increased Disbursements	Total Increased Activity
2010 August Monthly	9/21/2011	\$25,000	\$280,000	\$305,000
2010 September Monthly	9/21/2011	\$20,000	\$20,000	\$40,000
2010 October Monthly	9/22/2011	N/A	\$161,070.53	\$161,070.53
2010 12 Day Pre-General	9/22/2011	\$23,705	\$195,488.48	\$219,193.48
2010 30 Day Post-General	11/10/2011	\$191,970.63	\$291,279.31	\$483,249.94
2010 Year End	9/23/2011	N/A	\$9,973.50	\$9,973.50
2011 March Monthly	10/18/2011	\$12,500	N/A	\$12,500
2011 April Monthly	2/12/2012	N/A	\$13,423.92	\$13,423.92
2011 May Monthly	4/27/2012	N/A	\$6,159.40	\$6,159.40
2011 June Monthly	2/10/2012	\$17,353.12	N/A	\$17,353.12
2011 July Monthly	4/27/2012	\$4,300	\$15,880.13	\$20,180.13
2011 November Monthly	2/17/2012	\$3,871.14	N/A	\$3,871.14
	TOTAL	\$298,699.89	\$993,275.27	\$1,291,975.16

1 RAD sent Requests for Additional Information ("RFAs") to the Committee regarding all
2 of the Twelve Reports asking about a variety of issues, including the substantial increases in
3 reported receipts or disbursements on these reports. See Referral at 2-13. In response to RFAs,
4 the Committee filed Miscellaneous Text Submissions ("FEC Form 99"), or, in the case of the
5 RFAs for the 2011 June Monthly and 2011 July Monthly Reports, it attached a memo text to its
6 amended reports. These Form 99s and memo texts, among other things, included the statement
7 that "corrections were made to the committee's reports based upon a comprehensive internal

⁴ The Committee filed multiple amendments to the 2010 August Monthly, 2010 September Monthly, 2010 October Monthly, 2010 12-Day Pre-General, 2010 30-Day Post-General, 2010 Year-End, 2011 March Monthly, 2011 April Monthly, 2011 May Monthly, 2011 June Monthly, 2011 July Monthly and 2011 November Monthly Reports. The dates in the chart are the dates of the last amendments. The interim amendments are discussed fully in the Referral. Due to the fact that the Committee amended several of the 2010 reports prior to the 2011-2012 election cycle, RAD calculated the aggregate increases in activity on those reports using the last amended report filed during 2010 (December 10, 2010) rather than the original report. See Note 3. Also, in the course of making multiple amendments to its reports, the Committee frequently moved previously disclosed transactions to a different line number or schedule. The body of the Referral reflects total receipts and disbursements disclosed on each report. See Cover Memo to Referral at 1-2. The actual differences in activity between reports are shown in the back-up charts (Attachment 3 and 4 of the Referral). *Id.*

1 audit undertaken by the committee." *See* Referral at 1-2. The Form 99 responding to the RFAI
2 on the 2010 12-Day Pre-General Report also noted that the increased activity related to a
3 \$75,000 wire transfer that had bounced back and was resent, and to additional disbursements of
4 money orders and gas cards to canvassers. *Id.* at 4. Similarly, the Form 99 responding to the
5 RFAI on the 2010 30-Day Post-General Report also noted additional disbursements were related
6 to money orders and gas cards for canvassers. *Id.* at 5.

7 RAD referred the Committee to OGC for disclosing a total of \$298,699.89 in additional
8 receipts and \$993,275.27 in additional disbursements during the 2012 election cycle in the
9 Twelve Reports, which equals \$1,291,275.16 in transactions that had not been reported timely on
10 the original reports. Cover Memo to Referral. OGC then notified the Committee of the referral.

11 In response, the Committee asserts during the 2010 election cycle, it experienced an
12 unprecedented volume of activity, as its 2010 Year-End Report disclosed total receipts of
13 \$6,774,722.01 and total disbursements of \$7,135,673.60, and in calendar year 2011, it reported
14 more than \$4 million in financial activity. *Resp.* at 2. Additionally, the Committee asserts that it
15 sponsored a large get-out-the-vote program in the fall of 2010 using hundreds of field staffers,
16 but it was unprepared for the volume of activity the program generated. *Id.* The Committee
17 asserts that it disclosed the voluminous financial activity within the short time frame allowed on
18 pre- and post-election reports "to the best of its ability." *Id.* Still, the Committee decided to
19 audit its reports, and it retained a forensic accounting expert to review all of its financial activity
20 and file amended reports. *Id.* The Committee also asserts that it now has sufficient resources to
21 properly track and report activities, including staff dedicated solely to compliance, and it retains
22 outside compliance and legal assistance to ensure activities are properly and fully disclosed. *Id.*
23 Moreover, the Committee asserts that a large share of the unreported receipts relate to internal

party transfers and not from individual contributions to the party, and the unreported disbursements are largely confined to the 2010 pre- and post-general reports resulting from the unprecedented get-out-the-vote program. *Id.* Finally, the Committee asserts that it voluntarily amended the reports, and given that most of the violations expire under the statute of limitations in the next year, the Commission should dismiss the matter or refer it to the ADRO. *Id.* at 3.

III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act") requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434). *See* 52 U.S.C. § 30104(a)(1) (formerly 2 U.S.C. § 434(a)(1)); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements, including the appropriate itemizations, where required. 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)); 11 C.F.R. § 104.3.

Here, the Committee did not comply with the Act's reporting requirements when it failed to disclose \$298,699.89 in receipts and \$993,275.27 in disbursements on the original Twelve Reports. Furthermore, some of the Committee's reporting omissions occurred on two election-sensitive reports, the 2010 October Monthly Report and the 2010 12-Day Pre-General Report.⁵ Although the Committee requested that the matter be dismissed or referred to the ADRO, this matter is appropriately referred to OGC under Standard 7 of RAD's Review and Referral Procedures. *See 2011-2012 RAD Review and Referral Procedures for Unauthorized Committees* at 75. The high level of activity (over \$1.2 million) and the referral's breadth (twelve reports) makes it a valid MUR candidate. In addition, respondents in recent "increased-activity" referrals

⁵ Pursuant to 11 C.F.R. § 111.43(d)(1), election-sensitive reports include monthly reports due October 20th before the general election, and pre-election reports for primary, general, and special elections. 11 C.F.R. § 111.43(d)(1).

1 have presented mitigating factors similar to the ones the Committee identifies, but the
2 Commission resolved those cases through the Enforcement process. *See* MUR 6856 (David
3 Alameel for Congress) (bulk of transactions occurred over a short period of time); MUR 6707
4 (Visclosky for Congress) (hired a campaign finance consultant to conduct an audit of the
5 committee's books and disclosure reports). The Committee correctly points out that statute of
6 limitations impacts this matter – it begins to expire on August 20, 2015, and it will expire as to
7 significant portions of the violations on October 21, 2015, and December 2, 2015, respectively –
8 but we believe there is sufficient time to resolve the matter before any of the violation expire
9 under the statute. Further, if the Commission approves pre-probable cause conciliation as
10 recommended, we will ask the Committee to toll the statute of limitations during conciliation.

11 We therefore recommend the Commission open a MUR and find reason to believe that
12 the Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).
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⁶ We have included in our recommendation each report referred by RAD in accordance with the Commission-approved Referral Procedures. Recently, in other matters in which OGC made recommendations based on the aggregate increased activity threshold in the Referral Procedures, the Commission found reason to believe for only some of the reports RAD referred. In some matters, the Commission found reason to believe only with respect to those amended reports for which the amount in violation met a Standard 7 per report increase in activity referral threshold. *See, e.g.*, MUR 6856 (David Alameel for Congress); MUR 6705 (Freedom and Prosperity PAC), MUR 6706 (Schiff for Senate); MUR 6707 (Visclosky for Congress); MUR 6708 (Carney for Congress). In other matters, the Commission found reason to believe only with respect to those amended reports for which the amount in violation exceeded \$10,000 per report, and the remaining amounts in violation in the aggregate exceeded \$100,000. *See, e.g.*, MUR 6709 (Bachmann for Congress); MUR 6710 (Trent Franks); MUR 6757 (Gillibrand for Senate).

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1 **V. RECOMMENDATIONS**

- 2 1. Open a MUR.
- 3 2. Find reason to believe that Democratic Executive Committee of Florida and Judy
4 Mount in her official capacity as treasurer violated 2 U.S.C. § 434(b).
- 5 3. Approve the attached Factual and Legal Analysis.
- 6 4. Enter into conciliation with Democratic Executive Committee of Florida and Judy
7 Mount in her official capacity as treasurer prior to a finding of probable cause to
8 believe.

6. Approve the appropriate letter.

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